



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2017

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THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P.(MD) No.19609 of 2013

and

MP.(MD) Nos.1 of 2013 and 2, 3 and 4 of 2014

S.Suresh

.... Petitioner

-vs-

1. The Government of Tamil Nadu
represented by the Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Secretariat, Fort St. George, Chennai.
2. The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,/Aavin TCMPF(L) No.2, Pasumpon
Muthuramalinganar Salai,
Nanthanam, Chennai. Representing
by the Managing Director.
3. The District Employment Officer,
District Employment Office,
Nagercoil, Kanyakumari District.
4. The District collector
Kanyakumari District, Nagercoil.
5. The Kanyakumari District Cooperative Milk Producers Union
represented by the General Manager,
Nagercoil.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by th 5th respondent dated 05.12.2013 in R.C.No.4801/A1/2013 and quash the same and consequently direct the respondents to appoint the petitioner to the vacant post of Technician - Boiler Grade III in the 5th respondent office by treating the petitioner's military trade service as equivalent to civil trade as provided in G.O.Ms.No.106 dated 11.06.1999.

For Petitioner

: Mr.N.Dilipkumar

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents

: Mrs.S.Bharathi for R5
Government Advocate



Mr.J.Gunaseelan Muthiah for R1 to R4
Government Advocate

O R D E R

The prayer in the writ petition as amended is for a writ of Certiorari Mandamus to call for the records of the impugned order passed by the 5th respondent dated 05.12.2013 in R.C.No.4801/A1/2013 and to quash the same and consequently direct the respondents to appoint the petitioner to the vacant post of Technician Boiler Grade III in the 5th respondent office by treating the petitioner's military trade service as equivalent to civil trade as provided in G.O.Ms.No.106 dated 11.06.1999.

2. The petitioner had worked at Indian Navy between 04.05.1989 and 31.03.2007. He had 18 years of meritorious service in the Indian Navy. He is having the basic qualification of +2. He underwent necessary training and issued with D.E.M.E. (G.T) training certificate. He has also underwent training in basic engineering, auxillary machinery, steam machinery including boilers, gas turbine, industrial training, advance marine engineering, diesel engines and general service training. The petitioner had also successfully completed the training and issued with LMEQ(GT) training certificate. With these qualifications, when a notification was called for by the 5th respondent for appointment to the post of Technician Boiler through the District Employment office sponsorship in the year 2013, the petitioner's name also had been sponsored along with two others.

3. For the said post, three candidates including the petitioner were called for interview and the petitioner and one other candidate attended the interview on 22.11.2013, there were two committees appointed by the 5th respondent, one is called certificate verification committee and another one is called Assessment committee. The minimum qualification prescribed by the 5th respondent for the appointment of the said post of Technician boiler is that

- (i) pass in 8th standard ;
- (ii) must possess boiler attendant competency certificate Grade III issued by the Chief Inspector of Boiler to operate boilers as per the norms prescribed by the authority, and
- (iii) minimum of two years experience in boiler operation from a reputed organisation.

4. With these minimum eligibility as prescribed by the 5th respondent, the interview was conducted, where the petitioner had also attended along with another one person. According to the 5th respondent, the petitioner had been awarded only 13/100 marks and another person awarded with 11/100 marks and therefore, both the petitioner and the other person including the petitioner were rejected by the committee and the said post was not filled up and it was kept



vacant.

5. The main reason for rejection of the candidature of the petitioner, according to the 5th respondent, is that out of the three essential qualification, namely, pass in 8th standard, boiler attendant of competency certificate Grade III issued by the Inspector of Boiler and minimum two years of experience in Boiler operation, the petitioner did not produce the boiler attendant competency certificate Grade III issued by the Chief Inspector of Boilers, instead, the petitioner had produced only a Trade Certificate issued by the Indian Navy and the said certificate, since was not issued by the Chief Inspector of Boilers, which is one of the essential qualification for a person to hold the post of Technician Boiler at the 5th respondent Organisation, the 50 marks ought to have been awarded to the petitioner for holding the said certificate was not awarded to him. Since the minimum eligible marks to be obtained by a candidate is 60/100 and the petitioner for non production of the certificate was awarded only 13 marks, he was not selected and therefore, the candidature was outrightly rejected by the selection committee, namely, the two committees, ie., the certificate verification committee and assessment committee appointed by the 5th respondent and based on such rejection, the same has been communicated by the 5th respondent through the impugned order.

6. Though initially the petitioner has come out with a prayer of writ of mandamus directing the respondents to appoint the petitioner to the post of Technician Boiler Grade III at the 5th respondent office by treating the petitioner's certificate is an eligible or equivalent certificate as required by the 5th respondent, in the teeth of G.O.Ms.No.106 dated 11.06.1999, subsequently, has amended the prayer as Certiorarified mandamus, since the 5th respondent during the pendency of the writ petition has passed the impugned order dated 05.12.2013, whereby, the candidature of the petitioner was rejected.

7. Heard the learned counsel for the petitioner and the learned Government Advocates for the respondents.

8. The learned counsel for the petitioner would straight away invite the attention of this Court, firstly, on the import of G.O.Ms.No.106 dated 11.06.1999 Personnel and Administrative Reforms (R) Department. According to the learned counsel for the petitioner, paragraph No.4 of the said Government order provides for acceptance of the recommendations from the Director of Ex-Servicemen Welfare. By that, the Government directed automatic acceptance of equivalence of various military trades with that of civil trades as published by the Government of India and the course of Trade for the purpose of employment in the public service in the State. In view of the said decision taken by the State Government through the said Government order,



all certificates issued by the Military Trades are to be treated or accepted automatically, as to that of civil Trades published by Government of India for the purpose of public service in the State. Therefore, the learned counsel for the petitioner contends that the certificate issued by the Navy, where the petitioner worked for a long time, is to be accepted as an equivalent certificate for the purpose of the present employment at the 5th respondent organisation.

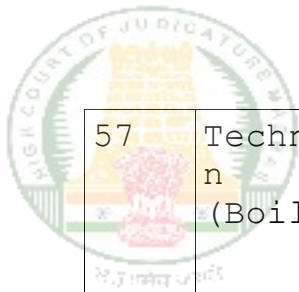
9. Secondly, the learned counsel for the petitioner has heavily relied upon the equivalent certificate issued by the Director of Boilers on 31.08.2016. In this order of equivalence, the Director of Boilers has stated as follows:

"With reference to your letter, it is informed that the "AUXILIARY MACHINERY WATCHKEEPING CERTIFICATE FOR ENGINE ROOM SAILORS" submitted by you has been endorsed, equivalent to Second Class Boiler Attendant Certificate in the Tamil Nadu State. The original Certificate is returned.

Kindly acknowledge the receipt of this communication."

10. In this regard, the learned counsel for the petitioner would further contend that though the said equivalent certificate has been subsequently issued, that will not enhance the qualification already acquired by the certificate, which was originally issued by the Navy and the same was produced before the 5th respondent interview Committee at the time of interview, as the equivalent certificate is that of the one required by the 5th respondent and therefore, the subsequent certificate dated 31.08.2016 issued by the Director of Boilers is only amplifying the existing factor with regard to the qualification and experience of the petitioner and therefore, the original certificate issued by the Navy produced by the petitioner before the 5th respondent Committee at the time of interview either should have been accepted by the 5th respondent committee or should have been referred to the Inspector of Boilers/Director of Boilers for clarifying the qualification as to whether the said certificate was equivalent to the said certificate issued by the said authorities. Without resorting to that course of action, the outright rejection made by the two committees for the purpose of the present recruitment is totally unjust and arbitrary.

11. Per contra, the learned standing counsel for the 5th respondent would rely upon the bylaws of the Society, which, in fact, governed the 5th respondent Organisation. According to the 5th respondent, the actual bylaws pertaining to the present recruitment is at Clause 57 under the head Technician (Boiler), such appointment is given as follows:



57	Technician (Boiler)	1. Direct Recruitment	Direct recruitment should be resorted only in case of non availability of internal candidates in Union 1 pass in 8 th std 2. Must possess Boiler Attendant Competency certificate Grade III issued by the Chief Inspector of Boilers, to operate Boilers as per the norms, prescribed by the authority 3. Minimum of 2 years experience in Boiler's Operation from a reputed organisation is must.
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The said bylaw has subsequently been amended on 21.05.2015 and after amendment, the said Clause 57 reads thus:

57	Technician (Boiler)	1. Direct Recruitment Direct recruitment should be resorted only in case of non availability of internal candidates in Union 1. Pass in 8 th std 2. Must possess Boiler Attendant Competency certificate grade III issued by the Chief Inspector of Boilers, to operate Boilers as per the norms prescribed by the authority. 3. Minimum of 2 years experience in Boiler's operation from a reputed organisation is must	Direct recruitment 1 pass in 8 th std 2. Must possess Boiler Attendant certificate Grade II/Grade III issued by the Director of Boiler, Chennai to operate Boilers as per the norms, prescribed by the authority
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12. By relying upon these bylaws, the learned counsel for the 5th respondent would vehemently contend that at the time of the interview, the petitioner had neither produced the certificate as required by the authority pursuant to the bylaws issued by the Inspector of Boiler nor the one issued by The Director of Boilers. Had any certificate to that effect as required under the Bylaws been produced by the petitioner, at the time of interview, the Committee appointed by the Commissioner for the present recruitment at the 5th respondent Organisation could have considered the same and in the absence of production of any certificate to that effect, which is one of the essential qualification and it is also mandatorily required, the Committee has no option except to reject the candidature of the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>

13. The learned counsel for the 5th respondent would also contend that apart from the non production of the Certificate, the



petitioner also has not done well in the interview, as he had obtained only 13 marks, out of 100 and since minimum marks itself is fixed as 60/100 for appointment, since the petitioner is not nearer to the same, the question of considering his candidature did not arise, at any rate, at that point of time and therefore, the Committee had recommended the rejection of the candidature of the petitioner, which has been communicated by the 5th respondent herein by the order impugned and the same cannot be interfered with.

14. This Court have considered the submissions made by the learned respective counsel and perused the records for consideration.

15. The issue raised in this writ petition is no doubt in a very narrow campus. The only issue to be decided in this writ petition is that as to whether the Certificate produced by the petitioner issued by the Navy Department for the purpose of appointment to the post of Technician Boiler Grade III at the 5th respondent Organisation is the equivalent Certificate or a qualification as recognised by the 5th respondent Organisation, based on the Bylaws governing them. No doubt, the petitioner had worked for several years at Indian Navy, where he had undergone rigorous training under various technical aspects, such as Craft Instructor, Fire Officer, Serang, Engine Room, Boiler Tindal, Boiler Attendant - coal Fired, Boiler Attendant - Oil fired and Dredger Operator.

16. For the said rigorous training, he has been given a certificate to that effect by the Indian Navy on 31.03.2007. With regard to other qualifications, namely, pass in 8th Standard and two years experience in Boilers, there is no doubt raised by the 5th respondent Committee, as the petitioner admittedly having the qualification and experience.

17. Insofar the certificate issued by the military organisations such as Navy, Air Force and Military, what shall be the procedure to be adopted for accepting those qualification/Certificate etc. for the purpose of civil employment in the State, the said Government order, namely, G.O.No.106 dated 11.06.1991, as rightly submitted by the learned counsel for the petitioner, can be pressed into service. Whether the said certificates or qualification given by the military and Navy services etc., are to be treated as an essential or equivalent qualification for the purpose of civil appointment in the State, the G.O. has given a clear way that such certificates shall be automatically accepted as an equivalent of various military Trades <https://hcservices.courts.gov.in/HCServices/> in the State. Therefore, the said issue, since has been resolved through the State Government by the said Government order,



acceptance of the Certificate issued by the Military or Naval authorities as the equivalent certificate of the civil Authorities may not be in much difficulty for the 5th respondent.

18. Now, turning to the claim of the petitioner to the effect that whether the Certificate issued by the Navy Department as referred to above is an equivalent certificate required by the 5th respondent Organisation for the present appointment, is to be looked into. The learned counsel appearing for the 5th respondent has produced the relevant document pertaining to the marks awarded to the petitioner, during the interview. According to the said document, the petitioner obtained 8 marks out of 10 under the heading marks for higher qualification in the same field. He has also obtained 5/5 under the heading experience in related field.

19. Thus, the petitioner got good marks in the other two requirements, namely, minimum qualification as well as the experience in Boiler, however, no marks were awarded to the petitioner under the caption "marks obtained in the prescribed qualification", which have the maximum mark of 50. The reason being for non awarding of the marks is that prescribed certificate from the Chief Inspector of Boiler was not produced by the petitioner. This was the observation made by the Committee appointed by the 5th respondent Organisation. Therefore, if the certificate produced by the petitioner is accepted as the equivalent certificate or qualification, certainly, the petitioner would get the full marks of 50.

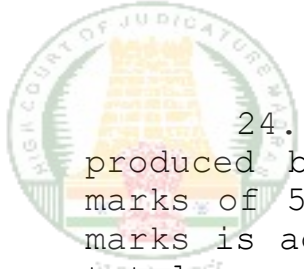
20. No doubt, the qualification prescribed under the bylaws for the said post of Technician Boiler is that the person must possess a Boiler Attendant competency certificate - Grade III issued by the Chief Inspector of Boiler. Even after amendment, the qualification is that he must possess the boiler attendant certificate Grade II or Grade III issued by the Director of Boiler, Chennai. In this context, whether the certificate produced by the petitioner, as issued by the Navy Department, is equivalent to the required certificate issued either by the Inspector of Boiler or the Director of Boiler has to be considered. In this regard, as has been produced by the petitioner side, the equivalent certificate, though has been dated as 31.08.2016, while after filing this writ petition, by the Director of Boilers, is in unequivocal terms certifying that the Auxiliary Machinery Watchkeeping Certificate for Engine Room Sailors submitted by the petitioner is equivalent to second class Boiler attender certificate in the State of Tamil Nadu. When the Head of the Department, namely, the Director of Boiler has certified the equivalence of the Certificate produced by the petitioner, then the question of doubting the certificate produced by the petitioner would no more be available to the respondents.



21. In this regard, the learned counsel for the 5th respondent would contend that had this equivalent certificate been produced by the petitioner at the time of interview, the interview Committee could have taken into account the said equivalent certificate and the resultant position would have been a different one. In this regard, this Court feels that the available certificate in the hands of the petitioner was produced before the interview committee, when three persons were called for interview, out of whom only two were attended including the petitioner and if there is any doubt over the certificate produced by the petitioner as to whether the said certificate is equivalent to the said Certificate required under the bylaws, the normal course of action expected from the authorities is to refer the matter either to the Inspector of Boiler or the Director of Boiler, Chennai, as who are the proper authorities to verify and to decide the equivalence of the certificate issued to the petitioner. This kind of/course of action is being adopted by all recruitment agencies including the State Public Service Commission, whenever a doubt arise as to the certificate or the equivalent of the candidature concerned. Here, there is no such attempt, since have been made by the said committees appointed for this purpose nor any of the respondents including the 5th respondent.

22. Had the certificate of the petitioner been referred to the authorities concerned, such equivalence could have been very well given by them at that time itself. Since without making any such attempt, the petitioner's case was kept pending all along. The petitioner had approached this Court originally with a prayer for mandamus and subsequently since the impugned order has been passed rejecting the candidature of the petitioner, the prayer has got amended and the petitioner had to necessarily get the certificate of equivalence from the Director of Boilers and he had also produced the same before this Court.

23. On perusal of these documents, it would combinedly and coherently go to show that the qualification acquired and the said certificate produced by the petitioner before the interview committee for the present recruitment, was an equivalent qualification as required by the 5th respondent Organisation, under the bylaws. This is the reason why originally the bylaws requiring the Certificate from Inspector of Boiler, subsequently had been amended to get it from the Director of Boiler. Since the Director of Boiler is the Head of the Department, who is the competent authority to give the equivalence to any other certificate of this nature for public recruitment and the same authority has given the equivalence to the petitioner, this Court is of the considered opinion that there is no further more requirement from the side of the petitioner to satisfy the 5th respondent Organisation or their interview committee etc. for claiming such post.



24. As has been mentioned above, if the certificate produced by the petitioner is accepted as equivalent, the full marks of 50 could have been awarded to the petitioner and the 50 marks is added to 13 marks already obtained by the petitioner, his total marks would come to 63. Therefore, certainly, the petitioner would cross the minimum required mark of 60. Since only two persons attended the interview, out of which, the petitioner alone will have the necessary qualification and obtained necessary mark also, certainly, he would be considered for the appointment to the said post.

25. During the pendency of the writ petition, the 5th respondent also has filed a narrative report. According to the said narrative report, which is part and parcel of the typed set of document filed by the 5th respondent, pursuant to the interview, since the candidature of the petitioner and another candidate were rejected, the said post was not filled up. Though the 5th respondent would further state that fresh employment notification will be published and the petitioner has to appear in that recruitment process, such exercise insofar as the petitioner is concerned is not required, because the petitioner even at the time of attending the interview had the necessary qualification to the satisfaction of the bylaws as well as the instructions given in the Notification. Moreover, this Court by order dated 03.12.2013, in M.P.No.1 of 2013 in this writ petition has passed an interim order to the effect that any appointment to be made is subject to the result of the writ petition. Since no appointment has been made admittedly and the said post still kept vacant, there can be no further plausible reasons on the part of the respondent still to reject the candidature of the petitioner and in this regard, this Court is of the considered view that the qualification of the petitioner, as produced by the petitioner at the time of interview, which has been subsequently clarified as equivalent from the very authority as required under the bylaws, namely, Director of Boilers, the candidature of the petitioner shall be accepted by the 5th respondent.

26. In the result, the impugned order dated 05.12.2013 is quashed and the writ petition is disposed of in the following terms:

(i) Since the petitioner's qualification ie., Boiler Trade Certificate produced by him from the Navy Department, since has already been declared by the Director of Boilers as an equivalent qualification, the said qualification shall be accepted by the respondents, especially, the 5th respondent.

(ii) Since the petitioner has already obtained 13 marks and if the 50 marks earmarked for certificate production is also added, he would also reach the minimum marks of 60 prescribed by the Director of Boilers and he would get total 63 marks. As no other candidate available other than the petitioner, the petitioner, since has fulfilled the required qualification as has been



narrated above, he shall be considered for the appointment to the post of Technician Boiler at the 5th respondent Organisation, if he is otherwise eligible.

(iii) The aforesaid directions shall be complied with by the respondents, especially, the 5th respondent within a period of four weeks from the date of receipt of a copy of this order.

(iv) It is needless to mention that once the candidature of the petitioner is accepted and consequently, if he is appointed, he shall be given such appointment forthwith and the petitioner shall not claim any continuity of service from the original time of proposed appointment, pursuant to the interview. In other words, his appointment, if any, has been made, as directed above, it shall only be prospective from the date of such appointment for all purposes governing the services of the petitioner.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Secretariat, Fort St. George, Chennai.
2. The Managing Director.
Tamil Nadu Cooperative Milk Producers
Federation Ltd.,/Aavin TCMPF(L) No.2, Pasumpon
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Kanyakumari District, Nagercoil.
5. The General Manager,
The Kanyakumari District Cooperative Milk Producers Union
Nagercoil.

+1 cc to MR.N.Dilip Kumar, ADVOCATE, SR NO: 276

+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 234

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and M.P.Nos.1 of 2013 and 2,3 and 4 of 2014
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